

depicting the sexual abuse of a child under six years old and approximately one-quarter of offenders possess one or more images depicting the sexual abuse of a child two years old or younger.³⁶

- Child pornography victims are harmed initially during the production of images, and the perpetual nature of child pornography distribution on the Internet causes significant additional harm to victims. Many victims live with persistent concern over who has seen images of their sexual abuse and suffer by knowing that their images are being used by offenders for sexual gratification and potentially for “grooming” new victims of child sexual abuse.³⁷
 - Child pornography offenses are international crimes. Images depicting the abuse of children are transmitted both domestically and internationally to offenders across the world, each of whom may continue to redistribute the same images. Once an image is distributed via the Internet, it is impossible to eradicate all copies of it.³⁸ The harm to victims thus is lifelong.
 - The ready availability of child pornography on the Internet, the existence of online child pornography “communities” that validate child sexual exploitation, and a growing but largely non-commercial “market” for new images all contribute to the further production of child pornography and, in the process, to the sexual abuse of children.³⁹
 - Although child pornography validates and normalizes the sexual abuse of children, social science research has not established that viewing child pornography “causes” the typical offender to progress to other sex offending against minors. For some offenders, however, obtaining sexual gratification through the use of child pornography is a risk factor for other sex offending against minors, as child pornography may strengthen existing tendencies in ways that may create a “tipping-point effect” if other risk factors are also present.⁴⁰
2. *Child pornography offenders engage in a variety of behaviors reflecting different degrees of culpability and sexual dangerousness.*
- Typical offenders maintain collections of still and video images numbering in the hundreds or thousands. Such images often depict

³⁶ See *id.* at 87.

³⁷ See Chapter 5 at 107–14.

³⁸ See Chapter 3 at 41, 64.

³⁹ See Chapter 4 at 97–99.

⁴⁰ See *id.* at 102–03.

"Computer" has the meaning given that term in 18 U.S.C. § 1030(e)(1).

"Distribution" means any act, including possession with intent to distribute, production, transmission, advertisement, and transportation, related to the transfer of material involving the sexual exploitation of a minor. Accordingly, distribution includes posting material involving the sexual exploitation of a minor on a website for public viewing but does not include the mere solicitation of such material by a defendant.

"Distribution for pecuniary gain" means distribution for profit.

"Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain" means any transaction, including bartering or other in-kind transaction, that is conducted for a thing of value, but not for profit. "Thing of value" means anything of valuable consideration. For example, in a case involving the bartering of child pornographic material, the "thing of value" is the child pornographic material received in exchange for other child pornographic material bartered in consideration for the material received.

"Distribution to a minor" means the knowing distribution to an individual who is a minor at the time of the offense.

"Interactive computer service" has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

"Material" includes a visual depiction, as defined in 18 U.S.C. § 2256.

"Minor" means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

"Pattern of activity involving the sexual abuse or exploitation of a minor" means any combination of two or more separate instances of the sexual abuse or sexual exploitation of a minor by the defendant, whether or not the abuse or exploitation (A) occurred during the course of the offense; (B) involved the same minor; or (C) resulted in a conviction for such conduct.

"Prohibited sexual conduct" has the meaning given that term in Application Note 1 of the Commentary to §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

"Sexual abuse or exploitation" means any of the following: (A) conduct described in 18 U.S.C. § 2241, § 2242, § 2243, § 2251(a)-(c), § 2251(d)(1)(B), § 2251A, § 2260(b), § 2421, § 2422, or § 2423; (B) an offense under state law, that would have been an offense under any such section if the offense had occurred within the special maritime or territorial jurisdiction of the United States; or (C) an attempt or conspiracy to commit any of the offenses under subdivisions (A) or (B). "Sexual abuse or exploitation" does not include possession, accessing with intent to view, receipt, or trafficking in material relating to the sexual abuse or exploitation of a minor.

2. *Application of Subsection (b)(4).—Subsection (b)(4) applies if the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, regardless of whether the defendant specifically intended to possess, access with intent to view, receive, or distribute such materials.*

Chapter 4

CHILD PORNOGRAPHY OFFENDER BEHAVIOR

This chapter describes the social science research regarding the three broad categories of child pornographer behavior patterns: collecting behavior; participation in an online child pornography "community" (and the related concept of a child pornography "market"); and commission of criminal sexually dangerous behavior in conjunction with child pornography offending. Each of the sections in this chapter relates to one or more of those categories of child pornography offender behavior.

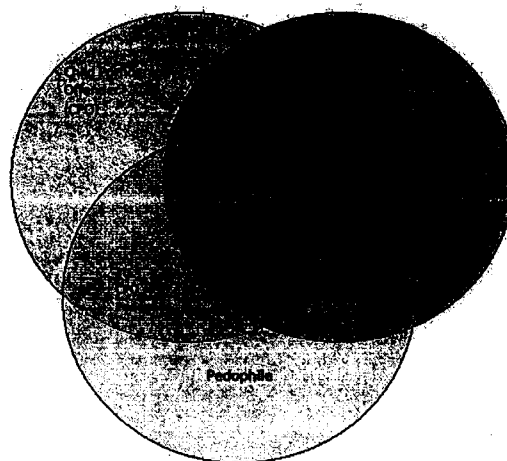
The first section of this chapter discusses the types of child pornography offenders. The second section explains motivations to collect child pornography. The third section describes the collecting behavior exhibited by child pornography offenders. The fourth section describes child pornography communities and illustrates the impact that these communities may have on child pornography offenders and on the child pornography "market." The fifth section discusses the relationship between child pornography offending and other sex offending.

A. TYPES OF CHILD PORNOGRAPHY OFFENDERS

In general, child pornography offenders can be classified based on their degree of sexual interest in children, their motivation to collect child pornography, and their tendency to engage in other sex offending. Some child pornography offenders meet the clinical diagnosis for pedophilia as defined and discussed below, and some child pornography offenders engage in other sex offending. However, not all child pornography offenders are pedophiles, and not all child pornography offenders engage in other sex offending. While there is overlap in these categories, each is separate and none is a predicate to any other. Figure 4-1 shows the relationship between child pornography offenders, other sex offenders, and pedophiles. Figure 4-1 is merely intended to depict these relationships and does not attempt to show actual ratios of the various groups.

Pedophilia is a clinical psychiatric diagnosis of a persistent sexual interest in sexually immature

Figure 4-1
Relationship Among Child Pornography
Offenders, Pedophiles, and Other Sex Offenders
(does not reflect actual percentages)



children and can be manifested in thoughts, fantasies, urges, sexual arousal, or behavior.¹ Pedophiles may be sexually interested in infants and toddlers, prepubescent children,² pubescent children,³ or all children, but most pedophiles do have a preference for victim age range and gender.⁴ Only a small fraction of pedophiles have an exclusive sexual interest in children;⁵ most

¹ The fourth edition of the American Psychiatric Association's (APA) Diagnostic and Statistical Manual of Mental Disorders Text Revision (DSM-IV-TR) provides a diagnosis of pedophilia as:

- A. Over a period of at least 6 months, recurrent, intense sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children (generally age 13 years or younger).
- B. The person has acted on these sexual urges, or the sexual urges or fantasies cause marked distress or interpersonal difficulty.
- C. The person is at least age 16 years and at least 5 years older than the child or children in Criterion A.

AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS TEXT REVISION 572 (2000).

The current clinical diagnosis is sometimes used inclusively to describe an attraction to pubescent children (typically aged 11-14), a paraphilia sometimes called "hebephilia." See Ray Blanchard et al., *Pedophilia, Hebephilia, and the DSM-V*, 38 ARCHIVES OF SEX BEHAV. 335, 335 (2009). Because the strict definition of pedophilia would not include hebephilia, and to better address the differences between pedophilia, hebephilia, and the related disorders, the APA is currently in the process of revising the DSM-IV-TR and has proposed changing the diagnosis of pedophilia to "pedophilic disorder." In the forthcoming DSM-5 (May 2013), pedophilic disorder will be defined as:

- A. Over a period of at least 6 months, an equal or greater sexual arousal from prepubescent or early pubescent children than from physically mature persons, as manifested by fantasies, urges, or behaviors.
- B. The individual has acted on these sexual urges, or the sexual urges or fantasies cause marked distress or impairment in social, occupational, or other important areas of functioning.
- C. The individual must be at least 18 years of age and at least 5 years older than the children in Criterion A.

Proposed Revisions to the Diagnostic and Statistical Manual of Mental Disorders to be included in the DSM-V, <http://www.dsm5.org/ProposedRevision/Pages/proposedrevision.aspx?rid=186#> (last visited May 9, 2012).

² Prepubescent refers to children who have not begun puberty. These children show no sign of development of secondary sex characteristics. See MedlinePlus, *Puberty & Adolescence*, <http://www.nlm.nih.gov/medlineplus/ency/article/001950.htm> (last visited Nov. 1, 2012).

³ Pubescent refers to children who have started puberty. These children show some development of secondary sex characteristics such as initial breast development or evidence of pubic hair or armpit hair. Postpubescent refers to individuals who have completed puberty and have fully developed secondary sex characteristics. See MedlinePlus, *Puberty & Adolescence*, <http://www.nlm.nih.gov/medlineplus/ency/article/001950.htm>. As discussed in note 2, sexual interest in pubescent children who are starting to show signs of secondary sex characteristic but are not yet sexually mature is sometimes thought to be a separate paraphilia called "hebephilia." Blanchard, *supra* note 1, at 336.

⁴ Ryan C. W. Hall & Richard C.W. Hall, *A Profile of Pedophilia: Definition, Characteristics of Offenders, Recidivism, Treatment Outcomes, and Forensic Issues*, 82 MAYO CLIN. PROC. 457, 459 (2007).

⁵ Hall & Hall, *supra* note 4, at 459 (citing GENE G. ABEL & NORA HARLOWE, *THE STOP CHILD MOLESTATION BOOK* (2002), which found that only 7% of pedophiles were exclusive); see also Jennifer McCarthy, *Internet Sexual Activity: A Comparison Between Contact and Non-Contact Child Pornography Offenders*, 16 J. SEXUAL AGGRESSION 181, 187 (2010) (finding that in a sample of child pornography offenders, approximately half were pedophiles but only 12% were exclusively pedophiles).